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8 IN THE UNITED STATES DISTRICT COURT
9 FOR THE NORTHERN DISTRICT OF CALIFORNIA
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11 UNITED STATES OF AMERICA, for the
12 Use and Benefit of J.A. Gonsalves & Son
Construction, Inc.; and J.A. Gonsalves & Son
Construction, Inc.

No. C 05-00483 CRB

**ORDER GRANTING MOTION FOR
DEFAULT JUDGMENT**

13 Plaintiffs,
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15 v.

16 TRAVELERS CASUALTY AND SURETY
COMPANY OF AMERICA, et al.,

17 Defendants.
18 _____/

19 This is an action for recovery of amounts due on a Miler Act Payment Bond, and
20 supplemental state law claims arising out of plaintiff J.A. Gonsalves & Son Construction,
21 Inc.'s ("JAG") provision of labor and supplies. Now pending before the Court is JAG's
22 motion for a default judgment against defendant Mass Ex Construction Company. After
23 carefully considering JAG's motion for a default judgment, and the evidence submitted in
24 support of the motion, the Court concludes that oral argument is unnecessary, see Local Rule
25 7-1(b), and GRANTS the motion for a default judgment in the total amount of \$49,912.13.

26 **DISCUSSION**

27 JAG entered into an oral subcontract with Mass Ex Construction Company ("Mass
28 Ex") to provide aggregate base and asphalt concrete for a recreation trail on a federal flood

1 control project in Napa, California. JAG's evidence demonstrates that although Mass Ex was
2 paid in full for the work performed by JAG, Mass Ex did not pay JAG. After this lawsuit
3 was filed, Mass ex paid JAG some of the monies owed, namely, \$130,334.75. Also, JAG has
4 received some monies on the Miller Act bond.

5 As of the date of the filing of JAG's motion for a default judgment, JAG is still owed
6 a total of \$49,912.13. This amount includes unpaid principle, interest at 10 percent per
7 annum, prompt payment penalties of two percent per annum, and attorneys' fees and costs
8 pursuant to Business and Professions Code section 7108.5.

9 As Mass Ex has not answered the complaint, as its default was entered in April 2005,
10 and has JAG has proved that Mass Ex owes it a sum certain, JAG's motion for a total
11 judgment in the total amount of \$49,912.13 is GRANTED.

12 **IT IS SO ORDERED.**

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14 Dated: November 15, 2005



15 CHARLES R. BREYER
16 UNITED STATES DISTRICT JUDGE
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